

## **ARTICLE 15**

### **NONCONFORMITIES**

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##### **PART 2 (Deleted by Amendment #87-141, Adopted April 27, 1987)**

## FAIRFAX COUNTY ZONING ORDINANCE

## ARTICLE 15

### NONCONFORMITIES

#### PART 1 15-100 NONCONFORMING USES

##### 15-101 Qualification of Nonconforming Uses

1. Notwithstanding the definition of nonconforming building or use presented in Article 20, a building or use shall not be deemed a nonconforming use if such was a conforming building or use prior to the effective date of this Ordinance, and such building or use would otherwise be a conforming use under the provisions of this Ordinance except that it does not meet the minimum district or lot size or minimum yard requirements of the zoning district in which located.

Such a use may be continued and may be enlarged, provided that such use after enlargement shall comply with all of the regulations of the zoning district in which located except the lot size requirements. However, if a single family detached dwelling is destroyed or damaged by any casualty, it may be reconstructed within two (2) years after the destruction or damage so as to occupy the same space that it occupied prior to such destruction or damage.

2. Any use which was existing prior to the effective date of this Ordinance, which is allowed within a particular zoning district as a special permit or a special exception use by the provisions of this Ordinance, may continue and shall not be deemed to be a nonconforming use in such district. However, except as qualified below, any subsequent replacement or enlargement of such use or of any building in which the same is conducted or the construction of any additional building for such use beyond the extent which existed prior to the effective date of this Ordinance, shall be subject to a special permit or special exception obtained in accordance with the provisions of this Ordinance. Such special permit or special exception shall be approved only if the resulting use complies with the standards set forth in Articles 8 or 9 for the particular use in question.

Minor modifications to include additions or expansions may be permitted without the requirement for approval of a special permit or special exception for churches, chapels, temples, synagogues or other such places of worship (hereinafter places of worship) and places of worship with a child care center, nursery school or private school of general or special education when:

- A. It is determined by the Zoning Administrator that such modifications shall not:
  - (1) Permit an increase in the number of seats, parking spaces or students, if applicable, which exceeds more than ten (10) percent of the existing amount; or
  - (2) Reduce the effectiveness of existing transitional screening, buffering, landscaping or open space; or
  - (3) Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development or part thereof to adjacent property; or

(4) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use, and minor additions to buildings may be permitted, provided that:

(a) the sum total of all such structures or additions shall not exceed the greater of 500 square feet gross floor area, or five (5) percent of the existing gross floor area up to a maximum of 2500 square feet of gross floor area; and

(b) the maximum permitted FAR for the zoning district shall not be exceeded.

B. Any request for an addition to a place of worship shall require the provision of written notice by the requester in accordance with the following:

(1) the notice shall include the letter of request with all attachments as submitted to the Zoning Administrator, a statement that the request has been submitted, and where to call for additional information; and

(2) the notice shall be sent to the last known address of the owners, as shown in the real estate assessment files of the Department of Tax Administration, of all property abutting and across the street from the site, or portion thereof, which is the subject of the request, and shall be delivered by hand or sent by certified mail, return receipt requested.

The request for an addition submitted to the Zoning Administrator shall include: an affidavit from the requester affirming that the required notice has been provided in accordance with the above; the date that the notice was delivered or sent; the names and addresses of all persons notified; and the Tax Map references for all parcels notified. No request for an addition shall be considered by the Zoning Administrator unless the affidavit has been provided in accordance with this paragraph.

When it is determined by the Zoning Administrator that a modification is not allowed under the above provisions, such modification shall require the submission and approval of a special permit or special exception application in accordance with the provisions of Articles 8 or 9.

Notwithstanding the above, modifications to an existing structure or use to provide an accessibility improvement shall be permitted and shall not require approval of a special permit or special exception.

3. Any single family dwelling or addition thereto permitted under Part 3 of Article 6, for which a Building Permit was approved prior to April 2, 1979 and which does not comply with the minimum yard requirement set forth in Par. 2B of Sect. 6-307 shall not be deemed a nonconforming use.
4. Any structure existing in the Airport Noise Impact Overlay District for which a Building Permit was issued prior to April 8, 1997 and which does not comply with the applicable interior noise level standard shall not be deemed a nonconforming use.

1. The following nonconforming uses may be continued, and upon obtaining a special exception from the Board in accordance with the provisions of Article 9, such use may be enlarged subject to the conditions set forth in Paragraphs 2 through 4 below:
  - A. Single family detached dwelling in a C or I district or an R district where such a dwelling is not permitted by the provisions of this Ordinance.
  - B. A commercial use, allowed as a permitted, special permit or special exception use in a C district of one class under the provisions of this Ordinance, but located in a C district of another class where such use is not allowed.
2. Such uses as set forth in Par. 1 may be enlarged to a total aggregate extent not to exceed twenty-five (25) percent of the area of land occupied by such nonconforming use, and to a total aggregate extent not to exceed twenty-five (25) percent of the gross floor area of the building in which such nonconforming use is conducted; provided that such enlargement shall never exceed the maximum floor area ratio prescribed for the zoning district in which located.
3. Structural alterations may be made in a building housing a nonconforming use set forth in Par. 1 above, but only to a total aggregate extent not to exceed fifty (50) percent of its current appraised value according to the records of the Department of Tax Administration.
4. Whereas a single family detached dwelling may be remodeled, extended, expanded or enlarged in accordance with the provisions of this Section, in no instance shall such structure be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work.
5. Notwithstanding the above, any modification to an existing nonconforming building or use to provide an accessibility improvement shall be permitted and shall not require approval of a special exception.

#### **15-103 Regulations Controlling Other Nonconforming Uses**

1. Any nonconforming use, other than those specified in Sect. 102 above, may be continued but shall not be enlarged or extended, nor shall any structural alteration be made in any building in which such use is conducted, except (a) as may be permitted by the Board in accordance with Sect. 9-619, or (b) as shall be permitted where any modification to an existing nonconforming building or use is to provide an accessibility improvement.
2. Any nonconforming use may be extended to occupy any part of a building that was manifestly arranged or designed for such use at the time of the effective date of this Ordinance, but no such use shall be extended to occupy any land outside such building. Except as provided in Sect. 102 above, no nonconforming use shall be extended to occupy a greater area of land than that occupied by such use prior to the effective date of this Ordinance.
3. Nothing in this Section shall be deemed to prevent keeping in good repair a nonconforming building or a building in which a nonconforming use is conducted, but no such building that is declared by any authorized County official to be unsafe or unlawful by reason of physical condition shall be restored, repaired or rebuilt.

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4. If a building in which a nonconforming use is conducted is moved for any distance whatever, for any reason, then any future use of such building shall be in conformity with the regulations specified by this Ordinance for the zoning district in which such building is located.
5. If any building in which any nonconforming use is conducted is hereafter removed, the subsequent use of land on which such building was located and the subsequent location and use of any building thereon shall be in conformity with the regulations specified by this Ordinance for the zoning district in which such land is located.
6. A nonconforming building or building in which a nonconforming use is conducted that is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of its current appraised value according to the records of the Department of Tax Administration, exclusive of foundations, may be restored within two (2) years after such destruction or damage but shall not be enlarged except as provided in Sect. 102 above. If any such building is so destroyed or damaged to an extent exceeding fifty (50) percent of its value as above, it shall not be reconstructed except:
  - A. For a conforming use.
  - B. If the building is used for agricultural purposes and the floors and foundation walls are of concrete and/or other masonry and are not practical to move.
  - C. If the nonconforming location is necessary to meet any requirement or regulation of the Health Department.
  - D. If the nonconforming building is a single family detached dwelling, in which event it may be reconstructed within two (2) years after the aforesaid destruction or damage so as to occupy the same space that it occupied prior to such destruction or damage or any part thereof.
  - E. If a building or use in the C-5, C-6, C-7, or C-8 District was a conforming use immediately prior to December 12, 1989, the effective date of Zoning Ordinance Amendment #89-185, and was made nonconforming by Zoning Ordinance Amendment #89-185 solely on the basis of one or more of the following conditions, or if a building or use was constructed pursuant to a site plan, approved building permit, approved special permit or approved special exception grandfathered from Zoning Ordinance Amendment #89-185, and such building or use is made nonconforming by Zoning Ordinance Amendment #89-185 solely on the basis of one or more of the following conditions, such building or use may be reconstructed provided that construction is commenced and diligently prosecuted within four (4) years after the aforesaid destruction or damage; provided, such period may be extended by the Zoning Administrator if it is determined that the owner has made a good faith attempt to commence construction within four (4) years after the aforesaid destruction or damage:
    - (1) The building is nonconforming on the basis of floor area ratio; or
    - (2) The use is an office in a C-5, C-6, C-7 or C-8 District and fails to comply with the use limitations for office uses set forth in the district.

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The building height and floor area ratio of the reconstructed use shall not exceed that which existed at the time of destruction or damage.

7. If any nonconforming use ceases for any reason for a continuous period of two (2) years or more other than for reasons beyond the control of the owner of the property, except for provisions of Par. 6 above, or is changed to or replaced by a conforming use, the land and building theretofore devoted to such nonconforming use shall thereupon be subject to all the regulations as to use for the zoning district in which such land and building are located as if such nonconforming use had never existed.
8. No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.
9. The rights pertaining to a nonconforming use or building shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or building on or in which such nonconforming use is conducted or of such nonconforming building or the nature of the tenure of the occupancy thereof.
10. All of the foregoing provisions relating to nonconforming uses and buildings shall apply to all nonconforming uses and buildings existing on the effective date of this Ordinance and to all uses and buildings that become nonconforming by reason of any amendment thereof. The provisions shall not apply, however, to any use established or building erected in violation of law, regardless of the time of establishment or erection.

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## NONCONFORMITIES